

ANDY DAVIS, PhD, 4-7-09

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

THE VIDEOTAPED DEPOSITION OF
ANDY DAVIS, PhD, produced as a witness on behalf
of the Plaintiff in the above styled and numbered
cause, taken on the 7th day of April, 2009, in the
City of Tulsa, County of Tulsa, State of Oklahoma,
before me, Lisa A. Steinmeyer, a Certified Shorthand
Reporter, duly certified under and by virtue of the
laws of the State of Oklahoma.

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1 Q Do you think that there are some but you're
2 not recalling?

3 A Well, I have a long and storied history and so
4 I have a substantial knowledge base in my head, and
5 so some of my opinions probably are reflecting the
6 30 years experience I have, and obviously I can't
7 think back to every document I've ever read in 30
8 years.

09:30AM

9 Q And how many specific experiences do you have
10 with the water, soil, sediments, geology of the
11 Illinois River watershed besides what you've done in
12 this case?

09:31AM

13 A I don't recall. I don't think I have any, but
14 my experience is based on my observation of behavior
15 of constituents, their fate and transport in soils,
16 groundwater and waters across the United States and
17 internationally.

09:31AM

18 Q Do you know, sir, whether Cargill,
19 specifically the 35 Cargill facilities that we're
20 talking about --

09:31AM

21 MS. COLLINS: Object to form.

22 Q -- have they -- has Cargill applied poultry
23 waste to the lands in the Illinois River watershed
24 to your knowledge?

25 MS. COLLINS: Object to form.

09:31AM

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1 A From my study, I assumed that they applied
2 litter proximal to the houses.

3 Q When you say proximal, what do you mean in
4 distance?

5 A Well, in fields adjacent to the properties or 09:32AM
6 the houses.

7 Q Fields adjacent to the houses or to the
8 property? I'm not sure I understand.

9 A Adjacent to the houses on the property.

10 Q On the property? 09:32AM

11 A Yes.

12 Q Okay, and when you made that assumption, did
13 you assume that for a period of a number of years or
14 just one year; what's your assumption?

15 A I didn't have an assumption because I was 09:32AM
16 looking at the data that had been collected by the
17 State from 2005 through approximately 2008,
18 thereabouts.

19 Q What history did you obtain with regard to the
20 application of poultry waste at the Cargill 35 09:32AM
21 sites?

22 A I didn't have any information to that. That's
23 why I just assumed it had been deposited on the
24 sites adjacent to the houses.

25 Q Okay, and for what period of time did you 09:33AM

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1 they were grown but --

2 Q Did you obtain any numbers of birds, how long
3 birds are in the house, that kind of specific data?

4 A I seem to recall they spend eight weeks in one
5 type of house, brooder houses, and then twelve weeks
6 in another type of house, but that wasn't really the
7 focus of my investigation, so it was just in
8 passing.

10:46AM

9 Q Okay. Who made the decision to use the
10 location of the poultry barns for your analysis?

10:46AM

11 A I don't understand the question.

12 Q Well, you've said you looked at the Cargill
13 sites specifically and the adjoining land around it.

14 A Uh-huh.

15 Q Who made the decision to look at the site of
16 the barn for your analysis? I mean, you've noted on
17 your report -- every time we look at a photo, you've
18 noted the location of the barns, have you not
19 basically?

10:46AM

20 A Yes.

10:47AM

21 Q Who made the decision to make that as your
22 focal point in your analysis?

23 A That was what I was asked to do by legal
24 counsel.

25 Q Okay, and did -- who provided you the

10:47AM

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1 locations of those sites for your analysis?

2 A I got those from Miss Collins.

3 Q Okay, and I think, if I'm not mistaken, there

4 is a PDF of what appeared to be a spreadsheet that

5 shows the lat-long and the name of a grower and

10:47AM

6 maybe some other data; is that correct?

7 A That's correct.

8 Q And is that what you relied on; is that what

9 you used to determine the sites of these barns?

10 A Yes.

10:47AM

11 Q All right. Do you know whether or not these

12 barns have earthen floors or some other types of

13 floors?

14 A I didn't go into the barns. I don't know.

15 Q Do you agree with me the barns, from what

10:48AM

16 you've observed, have roofs on them; these are

17 covered structures; correct?

18 A That's correct.

19 Q Did you or others for you inspect any actual

20 poultry waste storage facilities at the Cargill

10:48AM

21 locations?

22 A No.

23 Q So for purposes of your analysis, you assumed

24 that the barn was the location for what would be the

25 source of any contaminant when you compared it to

10:48AM

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1 the State's database; is that correct?

2 MS. COLLINS: Object to form.

3 A Well, I don't believe these folks consider the
4 phosphorus and nitrogen to be a contaminant. I
5 think they believe it to be a source of fertility
6 for the fields.

10:49AM

7 Q Let me ask the question this way: So for
8 purpose of your analysis, you assumed that the barn
9 was the location for what would be the source of the
10 phosphorus when you compared it to the State's
11 database; is that correct?

10:49AM

12 MS. COLLINS: Object to form.

13 A That area would be the location of the applied
14 litter, yes.

15 Q All right. Did you observe, review or study
16 any of the Oklahoma Department of Agriculture
17 records for Cargill growers?

10:49AM

18 A No.

19 Q Did you review or study any nutrient
20 management plans for Cargill growers?

10:49AM

21 A No.

22 Q Did you review or others for you review any
23 poultry waste land application records for Cargill
24 growers, including Cargill when I say Cargill?

25 MS. COLLINS: Object to form.

10:50AM

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1 A No.

2 Q What records did you rely on that poultry
3 waste was in fact land applied at or around the
4 barns?

5 A That's the assumption I made for the purpose 10:50AM
6 of the study. I had no other information.

7 Q Okay. That was going to be my next question.
8 Did you discuss your assumption with anybody in the
9 Cargill corporate representatives, not the lawyers
10 but the corporate representatives? 10:50AM

11 MS. COLLINS: Object to form.

12 A No.

13 Q Did you discuss the assumption you made
14 regarding the application sites with counsel for
15 Cargill? 10:50AM

16 A Yes. I said that was the predicate for my
17 work moving forward.

18 Q And did they approve that that would be the
19 predicate for your work?

20 MS. COLLINS: Object to form. 10:51AM

21 A They didn't object to it. So I assume that
22 was tasked assumption that they approved that.

23 Q All right. Other than the assumption you just
24 described, did you do anything else to satisfy
25 yourself where Cargill poultry waste was land 10:51AM

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1 applied?

2 MS. COLLINS: Object to form.

3 A Well, as I said, I had no other information to

4 reasonably assume they were taken anywhere else, and

5 my understanding is it was used as a resource to 10:51AM

6 actually facilitate grass growth. So I assume they

7 want to do that as close as possible to minimize

8 transport costs.

9 Q Okay. Did you discuss with any Cargill

10 growers the length that they would transport poultry 10:51AM

11 waste from the barn to the application sites?

12 A No.

13 Q So you don't know what distance the poultry

14 waste, when removed from the barns, may be

15 transported before it's applied; is that correct? 10:52AM

16 MS. COLLINS: Object to form.

17 A Well, that's correct. I assumed it would be

18 proximal to the houses.

19 Q Did you inquire and determine whether or not

20 the -- that all of the Cargill sites in fact land 10:52AM

21 applied on location where the barns were with the

22 immediately adjoining lands?

23 MS. COLLINS: Object to form.

24 A That was my assumption.

25 Q Okay, but you didn't make any specific inquiry 10:52AM

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1 to determine if that assumption was accurate;
2 correct?

3 A That's correct.

4 Q Okay. Did you ask anyone if they in fact land
5 applied on their sites at all?

10:52AM

6 MS. COLLINS: Object to form.

7 A No.

8 Q Did you ask anyone if they sold their poultry
9 waste to others who then land applied?

10 MS. COLLINS: Object to form.

10:53AM

11 A No.

12 Q Did you make any inquiry as to whether poultry
13 waste from Cargill locations was transported outside
14 the IRW?

15 MS. COLLINS: Object to form.

10:53AM

16 A No.

17 Q In your opinion is rainfall necessary in this
18 case to provide a transport mechanism of the
19 land-applied poultry waste?

20 MS. COLLINS: Object to form.

10:53AM

21 A It depends on where it is. We've had that
22 conversation before.

23 Q Well, where would it need to be that rain
24 wouldn't be necessary for the poultry waste
25 constituents to transport?

10:54AM

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